

REMARKS

The Examiner rescinded her previous Restriction Requirement and has now indicated that there are five (5) restriction groups instead of three (3). She defines the groups as follows and also requires election of a single species for initial evaluation:

- Group I Claims 1-6 and 8, wherein Ar = phenyl and $R^A/R^B = H$, unsubstituted alkyl or alkyl substituted with pyridine.
- Group II Claims 1-6 and 8, wherein Ar = phenyl and $R^A/R^B = H$ or phosphonate, provided that R^A and R^B are not both hydrogen.
- Group III Claims 1-6 and 8, wherein Ar = phenyl and $R^A/R^B = H$ or phenyl, provided that R^A and R^B are not both hydrogen.
- Group IV Claims 1-6 and 8, wherein Ar = phenyl and $R^A/R^B = H$, carboxyl, carboxyester, C(+O)alkyl, provided that R^A and R^B are not both hydrogen.
- Group V Claims 1-6 and 8, directed to any products of Formula I not covered by groups I-IV.

The Examiner contends that Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features. Specifically she states that the core structure of the compound of Formula I are taught in the prior art and thus this technical feature does not comply with a technical feature as defined by PCT Rule 13.2 because it does not define a contribution over the prior art. Applicants respectfully traverse.

First, Applicants point out that unity of invention was found for this application during the International stage of the PCT process. An International application which complies with PCT unity of invention requirements must then be accepted by all of the designated and elected offices, including the U.S. Patent and Trademark Office (USPTO) since Article 27(1) of the Patent Cooperation Treaty does not permit any national law or national office to require

compliance with different regulations relating to the contents of the International application. Thus, the US application must be examined for unity of invention consistent with the patent cooperation treaty, not just by giving verbal assent to the unity of invention standard, but in actual application of the standard. See *Caterpillar Tactor Co. v. Commissioner of Patent and Trademarks* 231 USPQ 590 (E.D. VA. 1986). In addition, the claims have a single inventive concept in that all of the compounds have a very similar technical structure and possess the same property of inhibiting IL-8 induced human PMNs chemotaxis.

For the reasons above, Applicants request that the Restriction Requirement be withdrawn in its entirety and that all the claims be examined in this application. In order to be fully responsive to the Office Action, however, Applicants elect, with traverse should the Examiner persist in the Requirement, to prosecute the claims of Group I.

The Examiner uses similar logic to require that the claims are directed to more than one species of the generic invention, noting that claims 1, 6 and 8 are generic, and requires election of a single species to which the claims will be restricted in no generic claims is held to be allowable. Applicants again traverse because the Examiner is once again applying a standard that is contrary to the accepted standard of the PCT as evidenced by the fact that unity of invention of the entire invention was found during the PCT International phase.

Once again, Applicants request reconsideration and withdrawal of the election requirement, but to be compliant with the rules, elect without prejudice to pursue the species “(R)(-)-3-[(4'-isobutyl)phenyl]butan-2-one.” Applicants reserve the right to pursue the unelected restriction groups in Divisional applications. In addition, Applicants understand that once the elected species is found patentable, the Examiner will extend the search to other species within the genus.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), Applicants petition for an extension of one (1) month to September 30, 2007 for the period in which to file a response to the Office Action dated July 31, 2007. The Commissioner is hereby authorized to charge Deposit

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Account 02-2448 in the amount of \$120 for the fee for extension of response within the first month.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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